

## Remarks

### Status of the Claims

Claims 1 through 23 are pending. Claims 24-50 have been withdrawn from consideration. Claims 51-54 were canceled. Claims 1 and 4 are amended. Claim 55-63 are new. No new matter has been entered.

### Amendments to Specification

The specification has been amended to include a statement regarding federally sponsored research.

### Summary of 24-June-2010 Office Action

In the 21-July-2010 Office action, Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Claims 1-5 and 7-11 are rejected under 35 U.S.C. 102(b) as unpatentable over U.S. Patent No. 6,786,451 to **Courtois et al.** Claims 12 and 13 are rejected under 35 U.S.C. 103(a) over **Courtois et al.** The Office Action indicates that claims 6, 14-18 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 19-23 are allowed. Applicants appreciate and acknowledge this indication of allowable subject matter.

### Rejection Under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph

Claim 4 is rejected under 112 U.S.C. § 112, 2<sup>nd</sup> paragraph. The word “unconnected” has been deleted from claim 4 and replaced with the phrase “separable from.” Claim 4 now recites that the “forward and aft assemblies are separable from one another.” A forward and aft assembly can be part of an elongated body but remain separable. No new matter has been entered. The rejection of claim 4 under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph is moot.

## Rejection Under 35 U.S.C. § 102(b)

### **Claims 1-5 and 7-11 Are Novel over Courtois et al.**

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989). Further, the elements must be arranged in the prior art reference as required by the claim. *Net MoneyIn, Inc v. Verisign, Inc.*, 545 F.3d 1359, 1369 88 USPQ 2d 1751, 1758 (Fed. Cir. 2008).

Independent claim 1, as amended, recites:

A deployable landing gear truck fairing for a deployable landing gear truck having aft, underside, and forward portions, comprising:

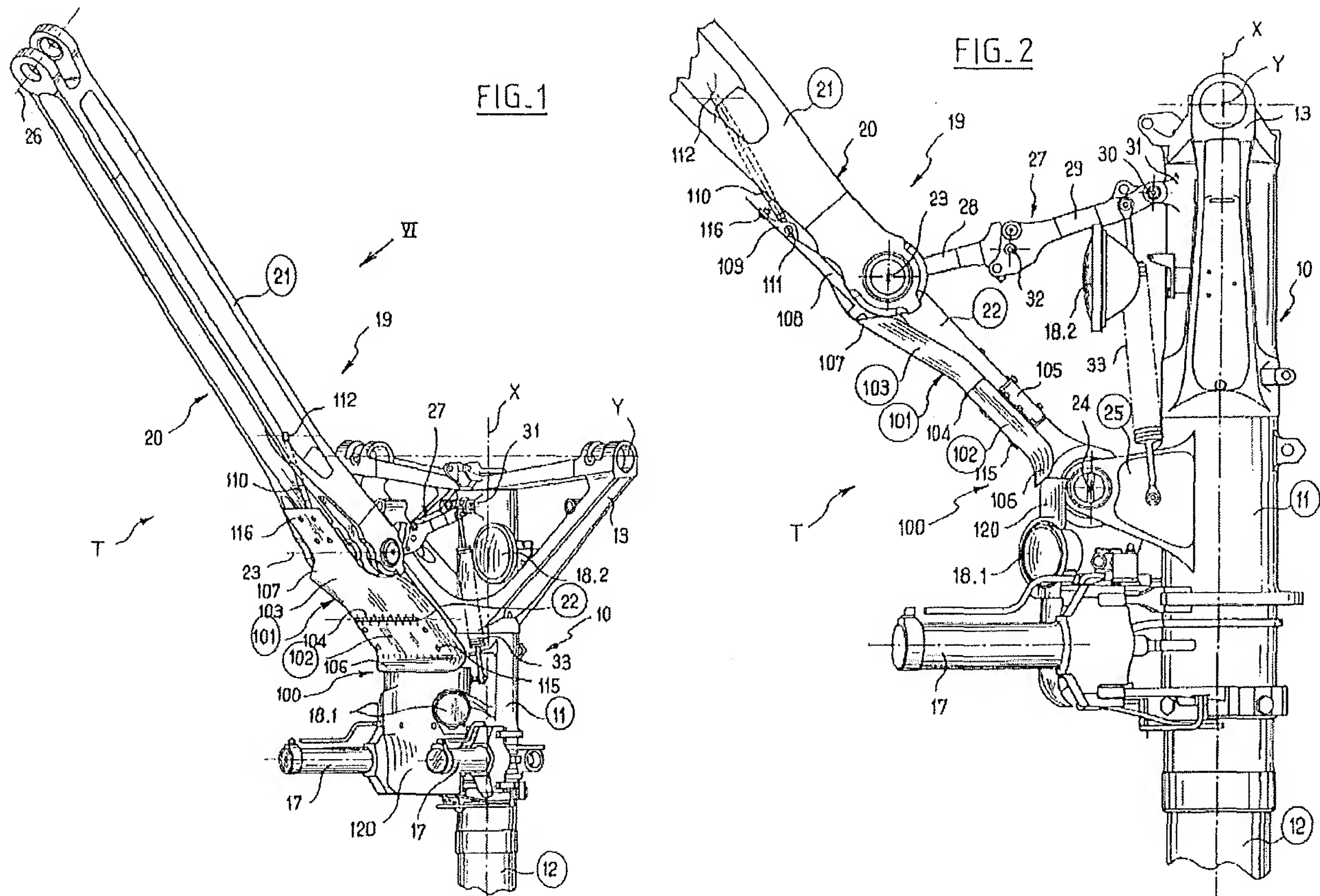
an elongated body connected to a rising front portion, the elongated body and front rising front portion capable of partially covering at least the underside and forward portions of the deployable landing gear truck, the elongated body having first and second lateral edges; and

first and second compliant edges affixed to corresponding first and second lateral edges.

The Office Action states that **Courtois et al.** discloses “a deployable landing gear truck fairing comprising all claimed elements including an elongated body 22, 21, 24, 25, 11, 12 having first and second lateral edges (i.e. the edges of element 22); a front rising portion 21 of the elongated body; first and second compliant edges (edges of elements 102, 103) affixed to the first and second lateral edges.” Page 2 of the Office Action. The Office Action continues by stating that “the edges of elements 102, 103 can be considered compliant either because of the spring hinge which causes them to be compliant relative to other moving parts or just because all materials are inherently compliant to some degree and there is no claim limitation to set the degree of compliance required).” Pages 2 and 3 of the Office Action. Applicants respectfully traverse this rejection.

**Courtois et al.** does not disclose a landing gear truck fairing having “an elongated body connected to a rising front portion” that is “capable of partially covering at least the underside and forward portions of the deployable landing gear truck.” As shown in Figures 1 and 2 of **Courtois et**

al. reproduced below, **Courtois et al.**'s landing gear T includes a top arm 21, a bottom arm 22 hinged to an appendix 25 that is associated with a strut 11 and a telescopic rod 12. **Courtois et al.** generally at Col. 3, line 65 - Col. 4, line 36. **Courtois et al.** discloses that the telescopic rod 12 is terminated by a pair of wheels on a nosegear leg (wheels not shown) (element numbers circled by applicants' attorney for illustration).



The landing gear truck in **Courtois et al.** would presumably attach to the terminal end of the rod 12. Accordingly, the asserted elements 22, 21, 24, 25, 11, 12 of **Courtois et al.** do not form a landing gear truck fairing that covers at least the underside and forward portions of a deployable landing gear truck.

**Courtois et al.** also does not teach that the “edges of elements 102 and 103” are compliant. Nor does **Courtois et al.** teach that elements 102 and 103 are “affixed to lateral edges of the elongated body,” as claimed. Just because the **Courtois et al.** fairing 101 includes a spring hinge 104

does not make the portions 101 and 102, or the edges thereof, compliant as the Office Action asserts. The ability of portions 102 and 103 to pivot about hinge 104 is the mechanism by which the fairing 101 can be folded upon itself when the landing gear is stowed during flight. The operation of the landing gear dictates this movement, not the composition of the edges of fairing portions 102 and 103. This is unlike the claimed invention where compliant edges are *affixed to* lateral edges of the elongated body to form a close fit adjacent the tires on a landing gear truck.

Further, Applicants respectfully disagree that “all materials are inherently compliant,” as asserted at page 3 of the Office Action. The Doctrine of Inherency requires that the Examiner provide a basis in fact and technical reasoning to support the determination that the allegedly inherent necessarily flows from the teachings of the applied prior art. *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (mere fact that a certain thing may result from a given set of circumstances is not sufficient); MPEP § 2112. Accordingly, it must necessarily flow from the teachings in **Courtois et al.** that the edges of portions 102 and 103 are compliant. However, there is no basis in **Courtois et al.** to conclude that the fairing 101 includes any compliant part. **Courtois et al.** does not disclose anywhere what the fairing 101 comprises. There is no reason disclosed therein to conclude that any portion of the fairing could or would be compliant. How could these portions be compliant yet maintain the rigidity to pivot about the hinge 104? What would be the purpose of the allegedly inherent compliant edges if there is nothing in the **Courtois et al.** landing gear T that would come in contact with them? These considerations show that the Examiner’s assertion that edge of portions 102 and 103 are inherently compliant is improper.

Finally, as discussed above, the claimed fairing includes first and second compliant edges that are affixed to an elongated body. This limitation sets forth all that is necessary to distinguish over the non-compliant edges of the fairing portions 102 and 103 of **Courtois et al.**

Accordingly, for at least the reasons stated above, independent claim 1, and claims depending therefrom, are novel over **Courtois et al.** Consequently, for the reasons stated above, the Examiner’s rejection of claim 1-5 and 7-11 under 35 U.S.C. 102(b) cannot stand. Withdrawal of this rejection is requested.

## Rejections Under 35 USC 103(a)

**Claims 12 and 13, are Patentable over Courtois et al.**

Claim 12 stands rejected under 35 U.S.C. 103(a) as being unpatentable over **Courtois et al.**

Claim 12 is dependent on claim 1, and includes:

The deployable landing gear truck fairing according to claim 1, wherein the compliant edge comprises one from the group consisting of rubber or fabric stripping, fiber reinforced rubber, nylon brush, spring steel or an inflatable bladder.

Claim 13 stands rejected under 35 U.S.C. 103(a) as being unpatentable over **Courtois et al.**

Claim 13 is dependent on claim 1, and includes:

The deployable landing gear truck fairing according to claim 1, wherein the compliant edge comprises a soft rubber or an elastomeric material.

The Office Action acknowledges that **Courtois et al.** does not teach “that the compliant edges comprises one of either a spring steel or an elastomeric material.” The Office Action, however, takes Official Notice “that it is notoriously well known to make springs form [sic] spring steel or elastomeric materials.” The Office Action then concludes that “[t]o have the spring made from one of these materials is considered to have been obvious to one having ordinary skill in the art.” Page 4 of the Office Action.

Applicants respectfully traverse the rejection under 35 U.S.C. § 103(a) for at least two reasons, each summarized briefly in this paragraph and discussed in further detail below. First, the **Courtois et al.** does not in fact result in the claimed invention, as the Office Action acknowledges. Every element must be considered since the elements make up the whole of the claimed invention. *C.f.*, *MPEP* 2142 (requiring an Examiner and a 103 rejection to consider the invention “as a whole”). Second, a rejection under 35 U.S.C. § 103(a) must also include a clear articulation of the reasons that support a conclusion of obviousness, which the instant Office Action does not include.

### **1. Claims 12 and 13 are Patentable because Courtois et al. Does Not Teach or Suggest The Whole Invention Claimed.**

Because claim 12 is dependent on claim 1, **Courtois et al.** does not include each element of the claimed invention. As discussed above, **Courtois et al.** does not teach or suggest “an elongated



body connected to a rising front portion, the elongated body capable of partially covering at least the underside and forward portions of the deployable landing gear truck.” Nor does **Courtois et al.** teach or suggest “first and second compliant edges affixed along corresponding first and second lateral edges,” for the reasons stated above.

Accordingly, for at least the reason stated above, dependent claims 12 and 13 are patentable over **Courtois et al.** Consequently, for the reasons stated above, the Examiner’s rejection of claim 12 and 13 under 35 U.S.C. 103(a) cannot stand. Withdrawal of this rejection is requested.

## 2. The Office Action has Failed to Establish a *Prima Facie* Case of Obviousness for Claim 2.

In order to establish a *prima facie* case of obviousness, the Examiner is required to provide a “clear articulation of the reason(s) why the claimed invention would have been obvious.” MPEP 2143, citing *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). As the Supreme Court stated in *KSR*, the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. *Id.* More specifically, MPEP 706.02(j) sets forth the requirements for the content of a 103 rejection. Accordingly, the Examiner must set forth:

- (A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate;
- (B) the difference or differences in the claim over the applied reference(s);
- (C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter; and
- (D) an explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made.

MPEP 706.02(j)

The Office Action fails to articulate the proposed modification of **Courtois et al.** necessary to arrive at the claimed subject matter. The Office Action also fails to recite a clear articulation of the reasons why dependent claims 12 and 13 would have been obvious. Reliance on the Official Notice

in conjunction with conclusory statements regarding obviousness does not satisfy this requirement. “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F. 3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), cited with approval in *KSR* and in MPEP 2142. See also MPEP 706.02(j) (“It is important that the Examiner properly communicate the basis for a rejection so that the issues can be identified early and the Applicant can be given fair opportunity to reply.”). The conclusory nature of the rejection of the claim is improper and should be withdrawn.

Applicants reserve all rights to present further arguments traversing any such *prima facie* case, should a future Office Action properly set forth such a basis. While the Applicants are under no obligation or burden at this time, they have presented their arguments in an effort to advance prosecution of the instant application. See MPEP 2142 (“The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.”).

Consequently, in view of the failure of the combined art to result in the claimed invention and/or the failure of the Office Action to present a *prima facie* case that dependent claims 12 and 13 are obvious, Applicants respectfully submit that a rejection of claim 12 and 13 under 35 U.S.C. § 103(a) over **Courtois et al.** is not proper and withdrawal of this rejection is requested.

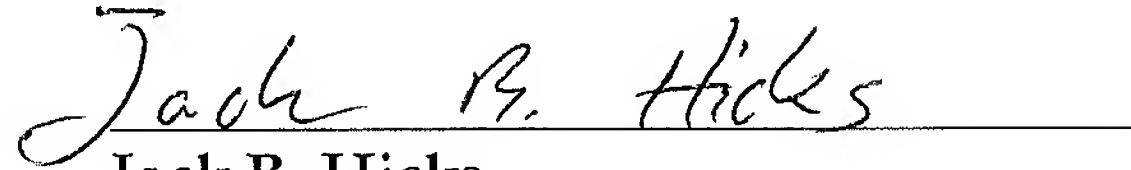
### **Miscellaneous**

New claims 55 - 66 are new. In accordance with the indication in the Office Action that claims 6, 14-18 would be allowable if rewritten in independent from, Applicants submit herewith new claims 55- 60. Claim 55 includes the limitations in claim 6, all of the limitations of the base claim 1, and intervening claims. Claims 56 – 58 are dependent on claim 55. New Claim 59 includes all the limitations in claim 14, all of the limitations of the base claim 1, and intervening claims. The remaining new claims 60 – 63 are dependent on new claim 56.

### Conclusion

Applicants believe this application is in condition for immediate allowance of claims 1-23, and 55-63 and such action is respectfully requested. If any issue remains unresolved, however, Applicants' attorney welcomes the opportunity for a telephone interview to expedite allowance and issue.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jack B. Hicks". The signature is written in dark ink and is positioned above a horizontal line.

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Date: October 21, 2010

Attorney Docket No.: G137 1020.1